Supreme Court, U.S.
FILED
04 639 NOV 8 2004
OFFICE OF

No.

IN THE

SUPREME COURT OF THE UNITED STATES

HOUD ZEIDAN,

- Petitioner

v.

JOHN ASHCROFT, ATTORNEY GENERAL

Respondent

On Petition For Writ Of Certiorari
To The United States Court of Appeals for the Fourth Circuit

PETITION FOR WRIT OF CERTIORARI

Laurence F. Johnson
Counsel for Petitioner
Johnson & Yang, P.C.
2730 University Blvd. West
Suite 500
Wheaton, MD 20902
(301) 949-0800

QUESTION PRESENTED FOR REVIEW:

Whether Petitioner's conviction for abduction in violation of § 18.2-47 of the Code of Virginia is an aggravated felony under § 101(a)(43)(F) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(43)(F) thereby barring judicial review, pursuant to § 309(c)(4)(G) of Illegal Immigration Reform And Immigrant Responsibility Act of 1996, of the Board of Immigration Appeal's decision.

PARTIES TO PROCEEDING:

HOUD ZEIDAN,
aka: Houd Zidan

Petitioner

v.

JOHN ASHCROFT, Attorney General,

TOM RIDGE, Director, Department of Homeland Security,

and

PHYLLIS HOWARD, District Director, Citizenship and Immigration Services.

Respondents.

---

* DISCLOSURE OF CORPORATE AFFILIATIONS AND OTHER ENTITIES WITH A DIRECT FINANCIAL INTEREST IN LITIGATION previously filed at the US Court of Appeals for the Fourth Circuit

DISCLOSURE OF CORPORATE AFFILIATIONS AND OTHER ENTITIES WITH A DIRECT FINANCIAL INTEREST IN LITIGATION

Only one form need be completed for a party even if the party is represented by more than one attorney. Disclosure must be filed on behalf of individual parties as well as corporate parties. Disclosure are required from amicus curiae only is a corporation. Counsel has a continuing duty to update this information. Please file an original and three copies of this form.

No. 04-1161 Caption: Zidan v. Ashcroft

Pursuant to FRAP 26.1 and Local Rule 26.1

Houd Zidan who is petitioner,
(name of party/amicus) (appellant/appellee/amicus)

makes the following disclosure:

1. Is party/amicus a publicly held corporation or other publicly held entity?
   ( ) YES (✓) NO
2. Does party/amicus have any parent corporations?
   ( ) YES (✓) NO
   If yes, identify all parent corporations, including grandparent and great-grandparent corporations:

3. Is 10% or more of the stock of a party/amicus owned by a publicly held corporation or other publicly held entity?
   ( ) YES (✓) NO

4. Is there any other publicly held corporation or other publicly held entity that has a direct financial interest in the outcome of the litigation (Local Rule 26.1(b))?
   ( ) YES (✓) NO

5. Is party a trade association?

( ) YES (✓) NO

If yes, identify all members of the association, their parent corporations, and any publicly held companies that own 10% or more of a member's stock:

/s/ Rachel Ullman (signature)

February 6, 2004 (date)

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I. BASIS FOR JURISDICTION

The Fourth Circuit entered its order dismissing Mr. Zeidan's petition for review on May 26, 2004. See Appendix B. The Fourth Circuit entered its order denying Mr. Zeidan's petition for panel rehearing on August 10, 2004. See Appendix B. The statutory provision believed to confer on this Court jurisdiction to review on a writ of certiorari the order in question is 28 U.S.C. § 1254(1):

28 U.S.C. § 1254. Courts of appeals; certiorari; certified questions

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods: (1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree."

II. STATEMENT OF THE CASE

In 1986 Mr. Zeidan was charged in deportation proceedings as a alien who is deportable from the United States pursuant to former sections 241(a)(2)(A)(iii) and 241 (A)(2)(a)(i)(I) of the INA, 8 U.S.C. sections 1251 (a)(2)(A)(iii) and (a)(2)(A)(i)(I) (1994), due to a conviction for abduction under Code of Virginia § 18.2-47, alleged to be both an aggravated felony offense and a crime involving moral turpitude. For this conviction, Mr. Zeidan had received a sentence of 12 months.

The record does not specify whether the crime was committed by force, intimidation or deception.

In 1997, the Immigration Judge upheld the grounds

of deportation, and denied all applications for relief from deportation. See Appendix I.

Mr. Zeidan timely appealed the Immigration Judge's decision to the Board of Immigration Appeals. The Board dismissed Petitioner's appeal on January 8, 2004. The Board determined that Mr. Zeidan had been convicted of an aggravated felony offense, "which satisfies the definition of a crime of violence under 18 U.S.C. § 16(b). It is clear that respondent knowingly engaged in conduct which involved a substantial risk that physical force would be used against another person." See Appendix H.

On February 9, 2004, Mr. Zeidan timely filed a petition for review of the Board of Immigration Appeal's decision with the Fourth Circuit Court of Appeals pursuant to 8 U.S.C. § 1252. Respondent moved to dismiss the timely filed petition on the basis that the Fourth Circuit, pursuant to § 309(c)(4)(G) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, 110 Stat. 3009 ("IIRAIRA"), lacked jurisdiction to review the Board's decision because Mr. Zeidan had been convicted of an aggravated felony offense.

On May 26, 2004, the Fourth Circuit granted the Respondent's motion to dismiss and dismissed the petition for review. See Appendix B. On August 10, 2004 the Fourth Circuit denied the petition for panel rehearing. See Appendix A.

III. ARGUMENT

This writ of certiorari should be granted because the Fourth Circuit has decided an important question of federal law in a way that conflicts with relevant decisions of this Court.

The Fourth Circuit granted Respondent's motion to dismiss the petition for review, in which Respondent alleged that the Fourth Circuit did not have jurisdiction to review the Board of Immigration Appeal's decision because Mr. Zeidan's conviction for "abduction" under Code of Virginia § 18.2-47, was an aggravated felony offense pursuant to INA § 101(a)(43)(F), a "crime of violence". This decision to dismiss for lack of jurisdiction conflicts with Taylor v. United States, 495 U.S. 575, 110 S.Ct. 2143, 109 L.Ed. 2d 607 (1990), Stromberg v. California, 283 U.S. 359, 51 S.Ct. 532, 75 L.Ed. 1117 (1931), Immigration and Naturalization Service v. Errico, 385 U.S. 214, 87 S.Ct. 473, 17 L.Ed. 318 (1966), and Fong Haw Tan v. Phelan, 333 U.S. 6, 68 S.Ct. 374, 92 L.Ed. 433 (1948).

In Taylor v. United States, the Supreme Court determined that a "categorical approach" would be used to determined whether a conviction pursuant to a state statute could be used for sentence enhancement purposes under 18 U.S.C. § 924(e). Under the categorical approach, to determine whether a conviction is for a crime of violence, it is necessary to consider the elements of the crime, and not the facts pertaining to the conduct involved. See Taylor at 600.

The Virginia statute can be violated by abduction by intimidation, abduction by force, or abduction by deception. See Code of Virginia §18.2-47. No evidence was submitted to determine whether Mr. Zeidan's conviction was based on intimidation, force or deception. When a statute is divisible and the record does not indicate which portion of the statue was violated, it will be assumed that the conviction resulted from the minimum conduct necessary to sustain the conviction that is the most favorable to the defendant. See Stromberg v. California, 283 U.S. 359, 367 - 368 (1931).

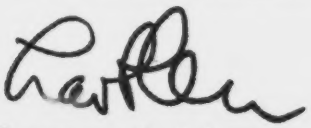
The minimum conduct necessary for an abduction conviction under Code of Virginia §18.2-47, is abduction by deception and transportation with intent to deprive another of liberty. See Scott v. Commonwealth, 228 Va. 519, 323 S.E. 2d 572 (1984) (each prohibited act in Code of Virginia 18.2-47 independently supports a conviction for abduction.)

Once convictions by intimidation and force are removed from consideration, the crimes actually committed by deception (the minimum conduct required for a conviction) will tend be to those where there was not a substantial risk that physical force would be used. As the minimum conduct required for a conviction does not ordinarily present a substantial risk of physical force against the person or property of another, a conviction under this statute can not be a crime violence under section 16(b). Moreover, a conviction under this statute can not be a crime of violence under section 16(a), as physical force is not an essential statutory element. The Fourth Circuit, therefore, erred by dismissing Mr. Zeidan's petition for review for lack of jurisdiction, as Mr. Zeidan's conviction was not for an aggravated felony offense.

In Immigration and Naturalization Service v. Errico, 385 U.S. 214, 225 (1966), the Court determined that doubts as to the "correct construction of the statute . . . should be resolved in favor of the alien." See also Fong Haw Tan v. Phelan, 333 U.S. 6, 10 (1948). As the Virginia statute could be violated by deception, intimidation or force, the correct construction of the statute, with any reasonable doubts decided in favor of Mr. Zeidan, would be that a conviction based on deception implies that force would not be used in the commission of the crime. Doubts were not resolved in favor of Mr. Zeidan, and as such, the decision of the Fourth Circuit to grant Respondent's motion to

dismiss Mr. Zeidan's petition for review for lack of jurisdiction conflicts with relevant decisions of this Court.

Respectfully submitted,



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Counsel for Petitioner

APPENDIX

APPENDIX A - ORDER DENYING REHEARING

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

FILED
August 10, 2004

No. 04-1161
A27-458-594

HOUD ZEIDAN
Petitioner

v.

JOHN ASHCROFT, Attorney General
Respondent

ORDER

The petitioner has filed a petition for rehearing.

The Court denies the petition for rehearing.

Entered for a panel comprised of Judge King, Judge Williams, and Judge Michael.

For the Court,

/s/ Patricia S. Connor
CLERK

APPENDIX B - JUDGMENT

FILED: May 26, 2004

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 04-1161
A27-458-594

HOUD ZEIDAN
Petitioner

v.

JOHN ASHCROFT, Attorney General
Respondent

- - - - - - - - - - - - -

On Petition for Review of an Order of the Board of Immigration Appeals.

- - - - - - - - - - - - -

In accordance with the written order of this Court filed this day, the Court dismisses the petition for review.

A certified copy of this judgment will be provided to the Agency upon issuance of the mandate. The judgment will take effect upon issuance of the mandate.

/s/ Patricia S. Connor
CLERK

APPENDIX B (CONT.)

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

FILED
May 26, 2004

No. 04-1161
A27-458-594

HOUD ZEIDAN
Petitioner

v.

JOHN ASHCROFT, Attorney General
Respondent

ORDER

The respondent has filed a motion to dismiss, and the petitioner has filed a response.

The Court grants the motion.

Entered at the direction of Judge King with the concurrence of Judge Williams and Judge Michael.

For the Court,

/s/ Patricia S. Connor
CLERK

APPENDIX C - CODE OF VIRGINIA §18.2-47

Virginia Statute 18.2-47, which provides:

"A. Any person, who by force, intimidation or deception, and without legal justification or excuse, seizes, takes, transports, detains or secretes the person of another, with the intent to deprive such other person of his personal liberty or to withhold or conceal him from any person, authority or institution lawfully entitled to his charge, shall be deemed guilty of "abduction"; but the provisions of this section shall not apply to any law-enforcement officer in the performance of his duty. The terms "abduction" and "kidnaping" shall be synonymous in this Code. Abduction for which no punishment is otherwise prescribed shall be punished as a Class 5 felony."

APPENDIX D - 18 U.S.C. § 16

18 U.S.C. § 16: "crime of violence"

"(a) an offense that has an element the use, attempted use or threatened use of physical force against the person or property of another, or

(b) any other offense that is a felony and that, by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense."

APPENDIX E - IMMIGRATION AND NATIONALITY ACT § 101(a)(43)(F), [8 U.S.C. §1011(a)(43)(F)]

(43) The term "aggravated felony" means –

. . . .

(F) a crime of violence (as defined in section 16 of title 18, United States Code, but not including a purely political offense) for which the term of imprisonment at[1] least 1 year.

---

1 *Sic*. Section 321(a)(3) of IIRAIRA amended subparagraphs (F), (G), (N), and (P) the same and omitted the term "is". Note also, subparagraph (P) does not contain the language referenced by section 321(a)(3). Section 322 (a)(2) also amended this subparagraph and subparagraph (G) by striking the phrase "imposed (regardless of any suspension of imprisonment" but the sentence must still be *ordered*. *See* INA 101(a)(48) *infra*.

APPENDIX E (CONT.) - IMMIGRATION AND NATIONALITY ACT § 101(a)(48)

(48) (A) The term "conviction" means, with respect to an alien, a formal judgment of guilt of the alien entered by a court or, if adjudication of guilt has been withheld, where –

(i) a judge or jury has found the alien guilty or the alien has entered a plea of guilty or *nolo contendere* or has admitted sufficient facts to warrant a finding of guilt, and

(ii) the judge has ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed.

(B) Any reference to a term of imprisonment or a sentence with respect to an offense is deemed to include the period of incarceration or confinement ordered by a court of law regardless of any suspension of the imposition or execution of that imprisonment or sentence in whole or in part.[2]

---

[2] Paragraph (48) added by § 322 of IIRAIRA. This section also made several conforming amendments to paragraph (43) by striking the term "imposed (regardless of any suspension of imprisonment)" in subparagraph (F), (G), (N), and (P). These amendments (new paragraph (48) and the conforming amendments to paragraph (43)) all apply "to convictions and sentences entered before, on, or after the date of the enactment of [IIRAIRA]. Subparagraphs (B) and (C) of section 240(c)(3) of [this Act], . . . shall apply to proving such convictions." IIRAIRA, §§ 322(c); 304(a)(3).

APPENDIX F - § 309(C)(4)(G) of IIRAIRA, September 30, 1996

(G) there shall be no appeal permitted in the case of an alien who is inadmissible or deportable by reason of having committed a criminal offense covered in § 212(a)(2) or § 241(a)(2)(A)(iii), (B), (C), (D) of the Immigration and Nationality Act (as in effect as of the date of enactment of this Act), or any offense covered by § 241(a)(2)(A)(ii) of such Act (as in effect on such date) for which both predicate offenses are, without regard to their date of commission, otherwise covered by § 241(a)(2)(i) of such Act (as so in effect).

APPENDIX G - INA §§ 241(a)(2)(A)(iii) and 241(A)(2)(a)(i)(I) [8 U.S.C. §§ 1251(a)(2)(A)(iii) and (a)(2)(A)(i)(I) (1994)]

§241 [8U.S.C. § 1251]
(a)
(2)
(A)
(iii) Aggravated felony. - Any alien who is convicted of an aggravated felony at any time after entry is deportable.

§241 [8U.S.C. § 1251]
(a)
(2)
(A)
(i) *Crimes of moral turpitude*. - Any alien who -
(I)[3] is convicted of a crime involving moral turpitude committed within five years (or 10 years in the case of an alien provided lawful permanent resident status under section 245(i) after the date of entry, and

[3] Subclause(I) in 1 241(a)(2)(A)(i) was amended and the language in parentheses was added by § 130003(d) of Pub.L. 103-322, 108 Stat. 1796, Sept. 13, 1994.

APPENDIX H - BIA DECISION AND ORDER

U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
Office of the Clerk

5201 Leesburg Pike, Suite 1300
Falls Church, Virginia 22041

Kaplan, Milton, Esquire
10 North Calvert Street
Suite 750
Baltimore, MD 21202

Office of the District Counsel
4420 N. Fairfax Drive, Rm 500
Arlington, VA 22203

Name: ZEIDAN, HOUD A27-458-594

Date of this notice: 01/08/04

Enclosed is a copy of the Board's decision and order in the above-referenced case.

/s/ Jeffrey Fratter
Chief Clerk

Enclosure

Panel Members:
PAULEY, ROGER

U.S. Department of Justice
Executive Office for
Immigration Review

Decision of the Board of
Immigration Appeals

Falls Church, Virginia 22041

File: A27 458 594 - Arlington Date: Jan. 8, 2004

In re: HOUD ZIDAN

IN DEPORTATION PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Milton Kaplan, Esquire

APPLICATION: Termination

We have jurisdiction over this timely appeal pursuant to 8 C.F.R. § 1003.1(b). The first issue on appeal is whether the Immigration Judge correctly found that the respondent was deportable from the United States. The second issue on appeal is whether the respondent was incorrectly denied consideration for any form of relief from deportation. The appeal is dismissed.

The respondent is a male, native and citizen of Syria, and is married to a citizen of the United States. He was convicted on August 2, 1988 of abduction in violation of Virginia Statue 18.2-47, and was sentenced to a year in prison. Based upon this conviction, the respondent was found to be an aggravated felon and having committed a crime involving moral turpitude within 5 years of entry. The respondent has contested both these findings on appeal.

We shall first address whether the respondent's

conviction constitutes an aggravated felony. Under section 101(a)(43)(F) of the Act, 8 U.S.C. § 1101 (a)(43)(F), the term "aggravated felony" means a crime of violence (as defined in section 16 of Title 18, United States Code, but not including a purely political offense) for which the term of imprisonment imposed (regardless of any suspension of such imprisonment) is at least 1 year. The term "crime of violence" is defined in 18 U.S.C. § 16 as

> (a) an offense that has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or
>
> (b) any other offense that is a felony and that, by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offence.

In determining whether a particular offense is a "crime of violence" under this definition, we have held that either the elements of the offense must be such that physical force is an element of the crime, or that the nature of the crime – as evidenced by the generic elements of the offense – must be such that its commission ordinarily would present a risk that physical force would be used against the person or property of another, irrespective of whether the risk develops or harm actually occurs. *Matter of Alcantar*, 20 I&N Dec. 801 (BIA 1994).

Virginia Statute 18.2-47 provides as follows:

> A. Any person, who, by force, intimidation or deception, and without legal justification for excuse, sizes, takes, transports, detains or

> secretes the person of another, with the intent to deprive such other person of his personal liberty or to withhold or conceal him from any person, authority or institution lawfully entitled to his charge, shall be deemed guilty of "abduction"; but the provisions of this section shall not apply to any law-enforcement officer in the performance of his duty. The terms "abduction" and "kidnaping" shall be synonymous in this Code. Abduction for which no punishment is otherwise prescribed shall be punished as a Class 5 felony.

Based upon our review, we find that the respondent was convicted of a crime which satisfied the definition of a crime of violence under 18 U.S.C. § 16(b). It is clear that the respondent knowingly engaged in conduct which involved a substantial risk that physical force would be sued against another person. *See* 18 U.S.C. § 16 (b); *United States v. Williams*, 110 F.3d 50 (9th Cir. 1997). Consequently, we agree with the Immigration Judge's determination that the respondent was convicted of an aggravated felony. That determination is also affirmed for the reasons provided therein.

We will now address whether the respondent's crime constitutes a crime involving moral turpitude. A crime involves moral turpitude if the conduct which constitutes the offense is inherently base, vile, or depraved, and contrary to the accepted rules of morality and the duties owned between persons or to society in general. *See Matter of Torres-Varela,* 23 I&N Dec. 78 (BIA 2001). We conclude that abducting a person against the person's will with the intent to deprive that person of his liberty, or to conceal a person from another person or institution is clearly a crime involving moral turpitude. This aspect of the Immigration Judge's decision is

The respondent argued on appeal that he should be considered for a section 212(c) waiver of inadmissibility. Section 212(c) of the Act provides in pertinent part that aliens lawfully admitted for permanent residence who temporarily proceeded abroad voluntarily and not under an order of deportation, and who are returning to a lawful unrelinquished domicile of 7 consecutive years, may be admitted in the discretion of the Attorney General without regard to certain specified grounds of exclusion. The phrase "lawfully admitted for permanent residence" means "the status of having been lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws, such status not having changed." *See* section 101 (a)(20) of the Act. Thus, in order to qualify for a section 212(c) waiver of inadmissibility, an alien must have acquired "lawful permanent resident status" in accordance with our laws, and must have retained that status from the time that he acquired it. *See Santos v. INS*, 421 F.2d 1303, 1305 (9th Cir. 1970); sections 101(a)(20) and (27)(A) of the Act; 8 C.F.R. § 211.1.(b). The respondent was never a lawful permanent resident of the United States, and is therefore precluded from consideration for the waiver.

The respondent also requested consideration for cancellation of removal. The respondent is in deportation proceedings. Thus, the respondent cannot apply for cancellation of removal under section 240A(b) of the Act because that provision does not exist for aliens, such as the respondent, who are in deportation proceedings.

Accordingly, we affirm the decision of the Immigration Judge, and the respondent's appeal is dismissed.

ORDER: The appeal is dismissed.

/s/ Roger Pauley
FOR THE BOARD

APPENDIX I - ORAL DECISION OF THE IMMIGRATION JUDGE

U.S. DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
Arlington, Virginia

File A27 458 594 December 1, 1997

In the Matter of

HOUD ZEIDAN,	)	IN REMOVAL
	)	PROCEEDINGS
Respondent	)	

CHARGES: Section 241(a) (4) of the prior Act, conviction of crime involving moral turpitude within five years of entry with a sentence of 12 months; and Section 241(a)(2)(A)(3) of the Immigration and Nationality Act, current edition, conviction of an aggravated felony as defined by Section 101(a) (43) of the Act.

APPLICATIONS: Adjustment of status with 212(h) waiver; Asylum; withholding of deportation; and voluntary departure.

ON BEHALF OF RESPONDENT:	ON BEHALF OF SERVICE:
Milton Kaplan, Esquire	Janette Martinez, Esquire

ORAL DECISION OF THE IMMIGRATION JUDGE

The respondent is a married, male, alien who is a native and citizen of Syria. He entered the United States on January 1, 1984. These proceedings were commenced when the first Order to Show Cause, dated March 5, 1986, was filed with the Immigration Court. Several superseding Orders to Show Cause subsequently have been filed.

The respondent, through counsel, at a master calendar appearance before this Judge on November 13, 1997, admitted factual allegations 1, 2, 3, 4, 6 and 7 of the Order to Show Cause dated November 21, 1988, Exhibit 1C.

Paragraph 5 was withdrawn charging that he had overstayed his time allowed.

Respondent admitted paragraphs 8 and 9 of the supplemental Order to Show Cause filed with the Immigration Court on September 2, 1997. Exhibit 1D.

For reasons developed further in the decision, I find by clear, convincing, and unequivocal evidence that the respondent is deportable as charged. 8 C.F.R. 242.14(a).

At this hearing I have considered the following evidence:

Exhibit 1A is the first Order to Show Cause dated March 5, 1986.

Exhibit 1B is the second Order to Show Cause dated October 28, 1987.

Exhibit 1C is the third charging document dated November 21, 1988.

Exhibit 1D is the fourth charging document dated September 22, 1997.

Exhibit 1E is the fifth charging document dated November 13, 1997. This last document, Exhibit 1E, charges that the respondent procured his admission by fraud or willful misrepresentation by failure to disclose his August 2, 1988 conviction for abduction.

I find that this charge has also been sustained since he had an obligation to present that information at the appropriate time.

Exhibit 2 is the Immigration Service's motion of September 14, 1994 to re-calendar the case filed in Arlington, Virginia. The case had been administratively closed in Newark, New Jersey on November 24, 1986.

The motion was transferred to the Immigration Court in Newark, New Jersey and on January 18th, 1995, Judge William Strasser in Newark Immigration Court re-calendared the case and changed venue to Arlington, Virginia.

Judge Strasser's decision of January 18th, 1995 is Exhibit 3.

Exhibit 4A, B, and C are the notices from the Arlington Court to the respondent attempting to notify him of his hearing in Arlington, Virginia.

Exhibit 5A is an affidavit dated "1-3-86" from the respondent concerning his entry in the United States.

Exhibit 5B is another affidavit from the respondent dated October 19th, 1977.

Exhibit 6 is a record of conviction for the respondent

in the Circuit Court in the County of Henrico, Virginia dated August 2, 1988 establishing his conviction for abduction with a sentence of 12 months.

Exhibit 7 is an order from Judge Gary Copeland of the Immigration Court in Arlington dated March 31, 1995 ordering the respondent's deportation to Syria in absentia when he failed to appear at his hearing in Arlington, Virginia.

Exhibit 8 is the motion to reopen dated May 21, 1997 filed on behalf of the respondent. This motion to reopen was granted by this Judge on September 2, 1997.

Exhibit 9 is a stay of deportation issued on May 23, 1997.

Exhibit 10 is a motion to terminate and an order from Judge Lisa Dornell dated July 8, 1997 terminating a companion proceeding in the Baltimore Immigration Court.

Exhibit 11 is a motion from the Immigration Service on the present case hare in Arlington, dated August 28, 1997, stating that the Service does not oppose the respondent's motion to reopen these proceedings.

Exhibit 12 is an order reopening the proceedings dated September 2, 1997.

Exhibit 13A is an application for an immigrant visa, and Exhibit 13B is a copy of the criminal file from Maryland submitted by the respondent.

Exhibit 14 is a request for continuance received in this Court on the November 24th, 1997, which I denied on the next day on the 25th of November, 1997.

I find that the respondent is deportable on two grounds

enumerated above, namely conviction of a crime involving moral turpitude within five years of entry and the charge of having been convicted of an aggravated felony. I believe that the crime of abduction is an aggravated felony because it involves violence and putting somebody in fear of their life. I think it's akin to the crime of kidnaping, which has been found, for example, by the Second Circuit in 1992 in the case of United States v. Patino, 962 F.2d 263 to be a crime of violence.

The respondent is therefore ineligible to apply for asylum as someone convicted of an aggravated felony.

He is not eligible to apply for withholding of deportation because I believe that the crime of abduction is a particularly serious crime. See Matter of Q-T-M-T-, Int. Dec. 3300 (BIA1996); and Matter of L-S-J-, Int. Dec. 3322 (BIA 1997).

Under Matter of Frentescu, 18 I&N Dec. 244 (BIA 1982) the Board of Immigration Appeals has stated that the nature of the conviction and the sentence and danger to the community are all factors to be taken into account in determining whether or not a crime is "particularly serious". Here in this case I find that abducting someone, even if it someone who is known to the respondent, is a particularly serious crime because it involves violence depriving someone of their liberty and the potential for extreme harm to the individual, including their death, as part of an abduction of kidnaping.

Because the respondent is convicted of a crime involving moral turpitude and an aggravated felony, he is not able to adjust his status to that of a lawful permanent resident. I would note that also here today that no Form 485 has been presented or fee'd into the Immigration Service nor a 212(h) waiver presented. In any event, however, they are barred by

the statute.

Similarly, I find that the respondent is not eligible for voluntary departure as someone who has been convicted of an aggravated felony and is barred by statute.

The respondent has sought to obtain a continuance in this case (see Exhibit 14) in order to obtain a pardon of his criminal conviction for abduction in 1988.

The Board of Immigration Appeals has repeatedly held that an alien should not be granted a continuance on the basis of an attempt to change a criminal conviction with the only exception of a direct appeal from the original conviction. Consequently, any attempt to get a pardon should certainly be pursued and indeed I note that the respondent has had over nine years to attempt to get a pardon. But the Court here today will not grant any continuance for that purpose since it is a collateral attack on the conviction itself.

I would note in conclusion that the fact that the respondent had left the United States in 1994 briefly does not alter the decision that he is an aggravated felon and that he has committed a crime involving moral turpitude within five years of entry. See Matter of Brown, 18 I&N Dec. 324 (BIA 1982); and Matter of Sanchez, 17 I&N Dec. 218 (BIA 1980).

Also, I have not continued this case because the Immigration Service has not acted on the respondent's 751 application. At best, this would only add another ground of deportability and I'm going ahead at this time because the respondent is deportable under two charges already.

The following orders are therefore entered.

ORDERS

IT IS ORDERED that the applications for relief are

denied.

IT IS FURTHER ORDERED that the respondent is ordered deported from the United States to Greece or, in the alternative, to Syria.

PAUL KAJOWSKI
Immigration Judge